

## **Remarks**

Applicant respectfully requests reconsideration of this application as amended.

Claims 22-48 have been amended. Claims 17-21 have been cancelled. No claims have been added. Therefore, claims 22-48 are present for examination.

### **35 U.S.C. §112 Rejection**

The Examiner has rejected claims 34-45 and 47 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

As recited in the specification, beginning on page 5, line 19, the wireless communications system includes a plurality of cells, each with a base station that comprise receivers and transmitters. A control station 205 (also comprising a receiver and a transmitter) manages the resources of the wireless communications system, in part by assigning codes and frequencies. The base station or control station also can support adjustable power control, cell sectoring, directional antennas, and antenna diversity. This type of base station and control station correspond to base stations and control stations that were well understood in the art in 1998.

In 1998, it was common for base transceiver stations (BTS) to be coupled to a base station controllers (BSC), which were coupled to mobile switching centers (MSC) for a connection to an MTSO. The specific hardware architecture took different forms, however, the BSC commonly was built as a rack of adapter cards, most of which ran from software embedded in RAMs and ROMs. RS-232 interfaces connected the adapter cards to some

central processing resource that included disk drives to store software and backup software. In some systems, the adapter cards would boot up from software received from the central system over the RS-232 interface.

Applicants respectfully submit that, given the state of the art in 1998, a person of average skill in the art would appreciate that the present invention could well be implemented by adapting current 1998 hardware systems. Such systems would include software stored centrally or in local RAM or ROM. Claim 34, as amended, specifically recites a storage medium having stored thereon instructions that, when executed by a machine, cause the machine to perform operations. This recited structure corresponds directly to the structure of adapter cards with software driven chips that formed the foundation of the BSC or MSC in 1998. However, the claim is not limited to such a structure, not to any of the structures that existed in 1998. Claims 35-45 and 47 are structured similarly and are believed to be fully supported in the specification on the same or similar grounds.

### **35 U.S.C. §102 Rejection**

#### **Schmidt**

The Examiner has rejected claims 22-33 under 35 U.S.C. §102 (b) as being anticipated by Schmidt, U.S. Patent No. 4,765,753 ("Schmidt").

Schmidt teaches only that 1) message channels from adjacent base stations can be separated either by using different RF carriers or different spreading codes or both, and 2) the same RF carrier or code word or both can be repeated in a further radio cell when spaced sufficiently apart. While an example distribution of carrier and codes is shown in Figure 1, no structure or method is described that can accomplish such a result.

Claim 22, for example, is directed to a method in which codes in use are dynamically determined and other codes are dynamically assigned based on the determinations. No such dynamic method is suggested in Schmidt. Specifically, Claim 22 recites, "dynamically determining a first code in closest use to a base station for a first cell." In Schmidt, the Figure 1 configuration is a static structure that is preset. There is no dynamic determination of the codes in closest use.

Claim 22 further recites, "dynamically assigning the second code to be used in the first cell." Again, Schmidt suggests no such dynamic process. Instead, the configuration is set and is not dynamically assigned.

Accordingly, Claim 22, as amended, is believed to be allowable over Schmidt. Claims 31, 34, 40, and 46 are believed to be allowable on the same grounds. While Claims 31, and 40 refer to frequency and not codes, the teaching in Schmidt are the same for both. The remaining claims depend from one or more of the claims listed above and are believed to be allowable therefor as well as for the recitations specifically set forth in each claim, respectively.

Claims 28-30 are directed specifically to an aspect of the invention relating to two different systems. According to the present invention, a frequency in use by a cell in a separate system is dynamically determined and a frequency is dynamically assigned to the first cell in accordance with that determination. There is no suggestion in Schmidt about how to deal with two systems that are in close use to each other. Claims 33, 45, and 48 also relate to the second cell being in a second system. These claims are believed to be allowable on these grounds, among others.

### **Conclusion**

Applicant respectfully submits that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicant respectfully requests the rejections be withdrawn and the claims as amended be allowed.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request for an Extension of Time**

Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

### **Charge our Deposit Account**

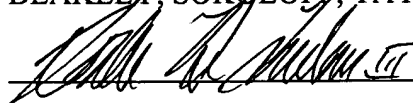
Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: \_\_\_\_\_

9/4/13



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